

In The United States District Court
For the Northern District of Oklahoma

FILED

MAY 31 2013

Lindsey Kent Springer
Petitioner

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.
United States America
Respondent

Case No. ~~13-CV-145~~
(Formerly 09-CR-043)

Motion To Substitute

Lindsey Kent Springer ("Petitioner") moves pursuant to Fed. R. Civ. Pr. 11 and 17 for an order substituting United States attorney Danny C. Williams for Respondent "United States of America" as he is the real party in interest in the § 2255 LCVR 9.2 action.

Petitioner on March 11, 2013 filed a § 2255 LCVR 9.2 action in the Northern District of Oklahoma. Doc 472-475

Section 2255 directs Petitioner's application be served on the United States attorney and grant a prompt hearing. See 28 U.S.C. § 2255(b); See also U.S. v. Hayman, 342 U.S. 205, 219 (1952)

Rule 3(b) governing 2255 actions or proceedings direct the Clerk of Court to serve the application on the United States attorney for that district with notice.

Rule 4 governing 2255 directs if the Judge does not dismiss the 42 U.S.C. 1983 action he must order the United States attorney to file an answer or other filing.

Although Doc 476 directs the "United States of America" to be served, that is a rule not enacted by Congress or the Supreme Court.

In Hill v. US, 368 U.S. 424, 427 (1962) the Supreme Court directed the remedy under § 2255 is exactly commensurate with traditional habeas corpus.

Traditional habeas holds the jailer to account for the applicants imprisonment. See Braden v. 30th Judicial Cir. Court of Kentucky, 410 U.S. 484, 494-95 (1973)

1. Danny C. Williams is real party in interest and should be substituted

Traditional habeas corpus requires the jailer to be called to account. Even in 28 U.S.C. § 2241 Petitions it is the warden that is named as Respondent.

In § 2255 the person called to account is

the "United States attorney" and no other person. The United States of America should be replaced with United States attorney Denny C. Williams.

On May 3, 2013, and again on May 13, 2013, Charles A. O'Reilly moved to Strike and correct his errors which led to this Court allowing his motion to be also a response in opposition to Petitioner's Motion to Recuse and Affidavit For Disqualification. Doc. 490

The representation by Mr. O'Reilly is exactly why Congress requires a political appointee to account for Petitioner's incarceration and not a career bureaucrat whose only interest is in striking documents in habeas proceedings pursuant to procedural morass.

When a statute creates an office to which it assigns specific duties, those duties outline the attributes of the office. See Gomez v. U.S. 490 U.S. 858, 863-64 (1989)

The "exactly commensurate habeas corpus act prior to § 2255 is to direct the writ to a person. Rev Stat. § 761 prescribes:

"If any person or persons to whom such

Writ of habeas corpus may be directed shall refuse to obey the same, or shall neglect or refuse to make the return, or shall make a false return...he or she shall be deemed and take guilty of a misdemeanor.

Ex Parte Baez, 177 U.S. 378, 388 (1900)

"In view of the plain terms...in the habeas corpus act [referring to Rev. Stat. § 761] the courts may not substitute another mode...a rule of court cannot overcome the plain command of the statute." Holiday v. Johnston, 313 U.S. 342, 352 (1941)

Conclusion

Petitioner respectfully request this Court order the caption to be changed to name Danny C. Williams as Respondent and order all future filings and pleadings be signed by him personally.

Respectfully Submitted

Lindsey Springer

Prisoner # 02580-063

Federal Correctional Institution

1900 Simler Ave

Bog Spring, Texas 79720

Certificat of Service

I hereby Certify that on May 27, 2013, I mailed my Motion To Substitute to the Clerk of Court, 333 West Fourth Street, Tulsa Oklahoma, 74103:

I Further certify that all parties to this LCV R 9.2 § 2255 action are ECF users and will receive service through the ECF System:

Danny C. Williams
United States attorney.

Lindsey K Sprunger
Server

Declaration of Mailing

I declare under penalty of perjury pursuant to 28 U.S.C § 1746 (i) under the laws of the United States of America that on May 27, 2013, I deposited the above Motion to Substitute in the U.S Mail box located inside FCI Big Spring Federal Prison within the external boundaries of Big Spring, Texas

Lindsey K Sprunger
5 Declaration

Hudsey East Springer
Prisoner # 00550-063
Federal Correctional Institution
1900 Sinder Ave
Big Spring, Texas 79720

RECEIVED

MAY 31 2013

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Legal Mail

7410336661

09-CP-48-SF
Clerk of Court
United States District Court
Northern District of Oklahoma
333 West Fourth Street
Tulsa, Oklahoma 74103

MIDLAND TX 797
RIO GRANDE DISTRICT
29 MAY 2013 PM 2 L



Postmark
5/29/13
8c

